



Office of Inspector General

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**United States Department of State
and the Broadcasting Board of Governors
Office of Inspector General**

Office of Audits

**Audit of International Boundary
And Water Commission Construction
Contract With Sun Belt Builders, Inc.,
Using Funds Provided by the
American Recovery and Reinvestment Act**

Report Number AUD/CG-12-11, December 2011

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and the Broadcasting Board of Governors

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PREFACE

This report is being transmitted pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared as part of the Office of Inspector General's (OIG) responsibility to promote effective management, accountability, and positive change in the Department of State and the Broadcasting Board of Governors.

This report addresses the International Boundary and Water Commission's (IBWC) compliance with Federal, Department, and American Recovery and Reinvestment Act (Recovery Act) acquisition management practices. The report is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

OIG contracted with the independent public accountant, Cotton & Company, LLP, to perform this audit. The contract required that Cotton perform its audit in accordance with guidance contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States. Cotton's report is included.

Cotton identified three areas in which improvements could be made: complying with all relevant Federal laws and regulations, including those of the Recovery Act; having adequate processes and systems in place to collect information required to be reported by the Recovery Act; and providing complete and accurate information as required by the Recovery Act.

OIG evaluated the nature, extent, and timing of Cotton's work; monitored progress throughout the audit; reviewed Cotton's supporting documentation; evaluated key judgments; and performed other procedures as appropriate. OIG concurs with Cotton's findings, and the recommendations contained in the report were developed on the basis of the best knowledge available and were discussed in draft form with those individuals responsible for implementation. OIG's analysis of management's response to the recommendations has been incorporated into the report. OIG trusts that this report will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of the individuals who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "H. Geisel", written in a cursive style.

Harold W. Geisel
Deputy Inspector General

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Audit of International Boundary and Water Commission Construction Contract With
Sun Belt Builders, Inc., Using Funds Provided by the American Recovery and Reinvestment Act

Office of Inspector General
U.S. Department of State
Washington, D.C.

Cotton & Company, LLP (referred to as "we" in this letter), has performed an audit of the International Boundary and Water Commission's (IBWC) construction contract with Sun Belt Builders, Inc. (SBBI), using funds provided by the American Recovery and Reinvestment Act (Recovery Act). We evaluated SBBI's compliance with relevant Federal laws and regulations, including those of the Recovery Act; adequacy of processes and systems in place to collect information required to be reported by the Recovery Act; and accuracy and completeness of required report submissions. This performance audit, performed under Contract No. S-AQM-PD-04-D-0035, was designed to meet the objective identified in the section "Objective" and further defined in Appendix A, "Scope and Methodology," in this report.

We conducted this performance audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. We communicated the results of our performance audit and related findings and recommendations to the U.S. Department of State Office of Inspector General.

We appreciate the cooperation provided by personnel in Department offices during the audit.

COTTON & COMPANY LLP

A handwritten signature in black ink, appearing to read "Michael W. Gillespie".

Michael W. Gillespie, CPA, CFE
Partner

Alexandria, Virginia
September 2011

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ACRONYMS

Department	Department of State
FAR	<i>Federal Acquisition Regulation</i>
IBWC	International Boundary and Water Commission
OIG	Office of Inspector General
Recovery Act	American Recovery and Reinvestment Act of 2009
SBBI	Sun Belt Builders, Inc.
SF	standard form

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Executive Summary

The Department of State (Department), Office of Inspector General (OIG), Office of Audits, engaged Cotton & Company, LLP (referred to as “we” in this report), to conduct performance audits of contractors that received funding provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act) from the International Boundary and Water Commission (IBWC). The audit objective was to determine whether contractors that received Recovery Act funds from IBWC complied with relevant Federal laws and regulations, including those of the Recovery Act; had adequate processes and systems in place to collect information required to be reported by the Recovery Act; and submitted required reports that are accurate and complete. One contractor selected for review was Sun Belt Builders, Inc. (SBBI).

SBBI was awarded two Recovery Act-funded contracts. Contract No. IBM10C0003 was awarded on October 28, 2009, for \$7,481,814 to furnish all labor, materials, and equipment for construction of improvements on the Hidalgo Phase I & II project. SBBI invoiced and was paid \$2,677,756 for work performed through June 30, 2010.

Contract No. IBM10C0007 was awarded on December 30, 2009, for \$18,898,768 to furnish all labor, materials, and equipment for construction of improvements to Lateral A to Donna Pump and Retamal Dike, a Lower Rio Grande Flood Control Project. SBBI invoiced and was paid \$3,999,715 for work performed through June 30, 2010.

SBBI did not comply with all construction contract terms and conditions or relevant Federal laws and regulations, including those of the Recovery Act; did not have adequate processes and systems to collect information required to be reported by the Recovery Act; and did not provide information in Recovery Act reports that was accurate and complete.

We discussed tentative results of this audit with SBBI officials during fieldwork and with IBWC officials on January 12, 2011. We recommended that the IBWC contracting officer require SBBI to establish procedures for complying with laws and regulations and Recovery Act requirements, obtain certifications from its subcontractor and any future subcontractors, implement Buy American Act controls, and ensure that its personnel are aware of FederalReporting.gov reporting requirements.

In its response to the draft report (see Appendix C), IBWC generally agreed with the report’s seven recommendations. Based on the response, OIG considers the recommendations resolved, and they will be closed pending review and acceptance of documentation for the actions OIG specified. The responses and OIG’s analyses are presented after each recommendation.

Background

IBWC is an international body composed of the United States Section and the Mexican Section. Each section is administered independently of the other. The United States Section is a Federal Government agency and has its headquarters in El Paso, Texas. IBWC operates under

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the foreign policy guidance of the Department of State. The mission of IBWC is to apply the rights and obligations that the Governments of the United States and Mexico assume under the numerous boundary and water treaties and related agreements. IBWC's obligations include construction, operation, and maintenance of levees and floodway projects along the Rio Grande River.

The Recovery Act provided \$220 million to IBWC for the Rio Grande Flood Control System Project to evaluate needed repairs and/or rehabilitation of deficient portions of the flood control systems, with all funds required to be obligated by September 30, 2010. Repairs and rehabilitation entail raising levee segments to original design levels and reconstructing segments where the integrity of the structures has been compromised. The project consists of two primary phases: the Pre-construction Phase, which involves geotechnical investigations, environmental documentation, and design, and the Construction Phase, which involves project construction. IBWC projects can continue to expend Recovery Act funds for contracts as long as those funds were obligated by September 30, 2010.

IBWC awarded two Recovery Act-funded contracts to SBBI. Contract No. IBM10C0003 was awarded on October 28, 2009, for \$7,481,814 to furnish all labor, materials, and equipment for construction of improvements on the Hidalgo Phase I & II project. SBBI invoiced and was paid \$2,677,756 for work performed through June 30, 2010. The Notice to Proceed was issued on November 23, 2009, with a performance period of 434 calendar days.

Contract No. IBM10C0007 was awarded on December 30, 2009, for \$18,898,768 to furnish all labor, materials, and equipment for construction of improvements to Lateral A to Donna Pump and Retamal Dike, a Lower Rio Grande Flood Control Project. SBBI invoiced and was paid \$3,999,715 for work performed through June 30, 2010. The Notice to Proceed was issued on January 20, 2010, with a performance period of 485 calendar days.

Objective

The audit objective was to determine whether contractors that received Recovery Act funds from IBWC complied with relevant Federal laws and regulations, including those of the Recovery Act; had adequate processes and systems in place to collect information required to be reported by the Recovery Act; and submitted required reports that were accurate and complete.

Results of Audit

SBBI did not comply with all construction contract terms and conditions or relevant Federal laws and regulations, including those of the Recovery Act; did not have adequate processes and systems to collect information required to be reported by the Recovery Act; and did not provide information in Recovery Act reports that was accurate and complete.

Finding A. Contractor Did Not Comply With All Contract Terms and Conditions

The contractor SBBI and its subcontractors did not comply with all terms and conditions of SBBI's Recovery Act construction contract. SBBI did not have controls in place to ensure that subcontractors were paying their employees in accordance with the Davis-Bacon Act; used E-Verify and obtained completed Department of Homeland Security Forms I-9, Employment Eligibility Verification, for all employees; developed codes of business ethics and conduct and internal control systems; and implemented affirmative action in accordance with the contractual requirements.

The Davis Bacon Act, outlined in the *Federal Acquisition Regulation* (FAR),¹ requires that laborers be paid "the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor." One of 11 subcontractors tested for compliance with the Act consistently paid one employee an amount less than that required in the Labor Rate Schedule outlined in the contract.

E-Verify is an Internet-based free program run by the U.S. Government that compares information about an employee's employment eligibility from Form I-9 with data from U.S. Government records. If the information matches, that employee is eligible to work in the United States. If there is a mismatch, E-Verify alerts the employer, and the employee is allowed to work while he or she resolves the problem within 8 days. The program is operated by the Department of Homeland Security in partnership with the Social Security Administration. The FAR² requires Federal contractors and subcontractors to enroll "as a Federal Contractor in the E-Verify program within 30 calendar days" of contract award. The three SBBI subcontractors tested for employment eligibility compliance did not enroll as Federal contractors in E-Verify at the time of award, as required by the FAR.³

Instructions for Form I-9 require all employees (citizen and noncitizens) hired after November 6, 1986, and working in the United States to complete the form, and employers must retain the completed forms for 3 years after the date of hire or 1 year after the date employment ends, whichever is later. Two of the three SBBI subcontractors tested did not ensure employment eligibility verification or perform procedures to ensure verification of citizenship. Specifically, Salinas Engineering & Associates and Valley Trimming Tree Experts did not have completed Form I-9 certifications on file for all employees.

SBBI and one subcontractor tested, G.R. Birdwell Construction, did not have a written code of business ethics in place as required by the FAR.⁴ Specifically, contractors and subcontractors that receive more than \$5 million in Federal funding are required to have, "within

¹ FAR 52.222-6(b)(1), "Davis Bacon Act." (July 2005)

² FAR 52.222-54(b)(1)(i), "Employment Eligibility Verification." (Jan. 2009)

³ FAR 52.222-54(e).

⁴ FAR 52.203-13(b)(1)(i)-(b)(1)(ii) and (d), "Contractor Code of Business Ethics and Conduct." (Dec. 2008)

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30 days after contract award,” a “written code of business ethics and conduct” and to make the code available to every employee working on the contract.

Additionally, the same subcontractor did not provide evidence that it had an ongoing ethics awareness and compliance program and internal control system, as required by the FAR.⁵ The FAR⁶ requires contractors to “exercise due diligence to prevent and detect criminal conduct” and to “otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

Finally, the subcontractor had no controls in place and did not ensure compliance with affirmative action. The FAR⁷ requires the contractor and subcontractor to take “affirmative action to ensure equal employment opportunity” and requires the contractor’s compliance to be “based upon its effort to achieve maximum results from its actions.” The FAR⁸ further requires the efforts to be fully documented and affirmative action steps to be implemented.

SBBI personnel stated that they were unaware of the requirement for a written code of business ethics. As for subcontractor noncompliance, SBBI representatives stated that they rely on the subcontractors to follow requirements in their subcontract agreements. Without adequate policies in place and proper adherence to those policies, there is an increased risk of improper conduct in connection with Federally funded contracts.

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc., to implement procedures to ensure that it and its subcontractors comply with *Federal Acquisition Regulation* requirements as they pertain to paying employees proper rates, enrolling as a Federal contractor, ensuring employment eligibility, creating a code of business ethics and conduct and internal control system, and ensuring affirmative action.

IBWC Response: IBWC stated that it would request that SBBI certify implementation of such procedures on or before August 30, 2011.

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing SBBI’s certification for such procedures.

⁵ FAR 52.203-13(c) and (d).

⁶ FAR 52-203-13(b)(2)(i)-(b)(2)(ii).

⁷ FAR 52.222-27(g), “Affirmative Action Compliance Requirements for Construction.” (Feb. 1999)

⁸ Ibid.

Finding B. Required Subcontractor Forms and Certifications Were Not Obtained

The contractor SBBI did not obtain all required forms from its subcontractors. The FAR⁹ requires contractors to deliver to the contracting officer a completed Office of Management and Budget standard form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States “within 14 days after the award of any subsequently awarded subcontract.” This form represents the subcontractor’s acknowledgement of some of the FAR clauses included in subcontractor contracts. SBBI did not obtain signed and dated SFs 1413 from three of its 18 subcontractors: TSI Laboratories, Heavy Duty Pressure Washing, and H2 Environmental Services. SBBI personnel stated that they were not aware that TSI Laboratories and Heavy Duty Pressure Washing were each lacking a completed SF 1413. Additionally, SBBI did not have a subcontract or work order agreement in place with H2 Environmental Services, even though this firm performed work over a period of several months.

Of the 18 subcontracts, six were work order agreements that did not contain the same contractual terms and conditions as those in the standard subcontract agreement. As a result, SBBI did not provide notification of rights and responsibilities for some of the applicable FAR clauses. Instead, the six subcontractors with work orders received notification only of those FAR clauses listed on their SFs 1413.

SBBI did not obtain certification from all 18 subcontractors, stating that at the time of award, “the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government” in accordance with the FAR.¹⁰ SBBI representatives stated that they did not obtain the certifications because they were unaware of the requirement.

The failure to obtain required forms and certifications could result in subcontractors being unaware of applicable FAR clauses and/or of subcontracts being awarded to companies that have been debarred, suspended, or proposed for debarment. We were able to verify that the subcontractors were not included in the Excluded Parties List System, which is an electronic Web-based system that identifies those parties excluded from receiving Federal contracts.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc. (SBBI), requires its subcontractors to submit Office of Management and Budget Standard Forms 1413, Statement and Acknowledgement, and require SBBI to provide these forms to IBWC.

IBWC Response: IBWC stated that it would require SBBI to submit Standard Forms 1413 before August 30, 2011. IBWC further stated that it had already implemented

⁹ FAR 52.222-11(d)(2), “Subcontracts (Labor Standards).” (July 2005)

¹⁰ FAR 52.209-6(b), “Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.” (Sept. 2006)

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changes to the payment application process to ensure that the contracting officer had confirmed receipt of the forms and that all subcontractors had been accounted for.

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG's review and acceptance of documentation showing IBWC's requirement for subcontractors to submit Standard Forms 1413 and the requirement for SBBI to provide the forms to IBWC.

Recommendation 3. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc., obtains certifications from all subcontractors confirming that they or their principals are not debarred, suspended, or proposed for debarment.

IBWC Response: IBWC stated it "will require" SBBI to submit certification, on or before August 30, 2011, showing that all subcontractors are not debarred, suspended, or proposed for debarment.

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG's review and acceptance of documentation of SBBI's certification confirming that the subcontractors are not debarred, suspended, or proposed for debarment.

Finding C. Subcontractor Payments Were Untimely

The contractor SBBI did not consistently pay subcontractors in a timely manner or pay the required interest for payment made after the required timeframe. The FAR¹¹ requires contractors to pay subcontractors for satisfactory performance not later than 7 days from the receipt of payment by the contractor for work performed under the contract. The FAR¹² outlines interest to be paid to the subcontractor for late payments beginning the 8th day after payment has been received by the contractor until the date the subcontractor is paid at the computed interest rate published in the *Federal Register*. SBBI did not pay three of the 26 invoices reviewed in accordance with the FAR, and no interest was paid.

SBBI attributed late payments to high turnover in its accounts payable department and delays in receiving project management approval. SBBI owed the subcontractors interest payments on the three late-paid invoices.

Recommendation 4. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc., pays its subcontractors in accordance with the required timeframe or pay interest for each day payment is late.

¹¹ FAR 52.232-27(c)(1), "Prompt Payment for Construction Contracts." (Oct. 2008)

¹² FAR 52.232-27(c)(2)(i)-(c)(2)(ii).

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IBWC Response: IBWC stated that it would require SBBI to submit certification, on or before August 30, 2011, showing that it has implemented procedures to ensure that subcontractors are being paid on time or are paying interest for each day payment is late.

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG's review and acceptance of documentation showing that IBWC obtained the certification requested.

Finding D. Buy American Act Controls Were Not in Place

The contractor SBBI did not have policies and procedures in place to ensure that all construction materials used on the construction project were produced in the United States. Specifically, the FAR¹³ defines "construction material" as "an article, material, or supply brought to the construction site" by the contractor or subcontractor "for incorporation into the building or work." The FAR¹⁴ requires "unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project" be produced in the United States for Recovery Act-funded projects. This clause also implements the "Buy American Act"¹⁵ by providing a preference for unmanufactured domestic construction material.

SBBI relied on the material specification submittal compliance statement from the IBWC contracting officer's representative as certification that materials were in compliance with the Buy American Act. The contracting officer's representative determined, however, only whether material specifications submitted were in compliance with the contract specifications, not whether the materials were Buy American Act compliant. We were able to determine that all but one type of materials used as of June 30, 2010, were Buy American Act compliant. There was no assurance that the PVC pipe used in Contract No. IBM10C0003 was produced in the United States.

Without procedures to ensure that materials were produced in the United States, a contractor and/or a subcontractor could be in violation of the Buy American Act. Corrective actions for violating the act can include the improperly purchased foreign-manufactured goods being removed or replaced, the amount of the award being reduced, or even future funds being withheld.

Recommendation 5. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc., to establish procedures to ensure that materials purchased for American Recovery and Reinvestment Act construction projects are in compliance with the Buy American Act.

¹³ FAR 52.225-21(a), "Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials." (Mar. 2009)

¹⁴ FAR 52.225-21(b)(1)(i)-(b)(1)(ii).

¹⁵ 41 U.S.C. §§ 8301-05.

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IBWC Response: IBWC stated that it “has been requiring contractors to comply with the Buy America Act” and that a “pre-requirement” for contractors before they receive a Notice to Proceed from IBWC is for the contractor to identify a Quality Control Program Manager, who will implement the Buy America Act. IBWC further stated that “responsibility and the ramifications for non-compliance with the Act [are] clearly addressed at each pre-construction conference” and that material not in compliance with the Buy America Act “will not be paid for and may need to be removed at contractor’s expense.” IBWC also stated that its Contracting Officer’s Representatives for each project will ensure the acceptability of material furnished by the prime contractor and its subcontractors before “acceptance of any payment application” and that the contractor “will be asked to certify that it has an established Buy American program in effect under these contracts.”

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing the procedures the contractor has established to ensure materials purchased are in compliance with the Buy American Act program.

Recommendation 6. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc., to obtain documentation showing that the PVC pipe used in Contract No. IBM10C0003 was produced in the United States or was subject to an exception under *Federal Acquisition Regulation* and Buy American Act requirements.

IBWC Response: IBWC stated that it would require SBBI to obtain documentation, on or before August 30, 2011, pertaining to the PVC pipe.

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of SBBI’s documentation pertaining to the PVC pipe.

Finding E. Recovery Act Labor Reporting Was Inaccurate and Incomplete

The contractor SBBI incorrectly calculated and reported the number of jobs created and retained for both contracts in two of two reportable periods. Specifically, SBBI calculated jobs by comparing the total number of employees at the end of previous reporting periods with the total number of employees at the end of the current reporting period. Instead, SBBI should have reported the number of full-time-equivalent employees calculated cumulatively as all hours worked divided by the number of hours in a full-time schedule. This information is explained in the FAR¹⁶ and on the Web site FederalReporting.gov, “Frequently Asked Questions for Federal Contractors.” SBBI officials stated that they were not aware that specific calculation guidance was available.

¹⁶ FAR 52.204-11(a), “American Recovery and Reinvestment Act Reporting Requirements.” (Mar. 2009)

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SBBI incorrectly reported the total amount of Recovery Act funds invoiced during the second quarter of 2010. The FAR¹⁷ requires contractors to report the amount of Recovery Act funds invoiced for the reporting period. SBBI incorrectly included amounts for work performed under both contracts during the month of June but that was not invoiced until July 2010.

Also, SBBI did not submit correct and complete reports for subcontractors on FederalReporting.gov, as required by the FAR,¹⁸ for its Recovery Act construction contracts. The contractor is required to report specific information for “any first-tier subcontract funded in whole or in part under the Recovery Act that is over \$25,000.” This information includes the subcontractor business details, funding agency, description of products or services provided under the contract, and place of performance. Specifically, SBBI

- Incorrectly reported funds awarded to one of 17 subcontractors under the name and Dun and Bradstreet Number of a different company that was not a subcontractor on the contract.
- Did not report nine of 17 subcontractors in one or more quarters in which valid subcontracts were in place.
- Incorrectly reported the award dollar value for five of 17 subcontractors in one or more quarters.
- Incorrectly reported the award date for two of 17 subcontractors in one or more quarters.

Additionally, reporting at the contractor level was not performed in a timely manner or performed accurately. For example, SBBI

- Incorrectly reported the contract award date for one contract in two of the three reporting periods reviewed.
- Submitted required quarterly reports late for both contracts under all three of the reporting periods reviewed.
- Inaccurately and inconsistently reported executive officer compensation for both contracts in all three reporting periods reviewed.

SBBI officials stated that these conditions occurred because personnel were unfamiliar with or did not understand reporting regulations and that no controls were in place to ensure that data reported was accurate and complete. Without complete and accurate reporting, all contract information is not available to the U.S. Government and to the public, thereby failing to meet the transparency goal of the Recovery Act.

¹⁷ FAR 52.204-11(d)(2).

¹⁸ FAR 52.204-11(d)(10).

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Recommendation 7. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc. (SBBI), to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its Recovery and Reinvestment Act construction contracts and that SBBI prepares and submits required reports that are complete and accurate.

IBWC Response: IBWC stated that it would require Recovery Act recipients to certify that its Recovery Act reporting specialists have taken the seven training webinars within 60 days of the response to the audit.

OIG Analysis: OIG considers the recommendation resolved. The recommendation can be closed pending OIG's review and acceptance of documentation showing that IBWC has implemented requirements for SBBI, Inc., and other Recovery Act recipients to take the online training pertaining to FederalReporting.gov reporting requirements.

List of Recommendations

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc., to implement procedures to ensure that it and its subcontractors comply with *Federal Acquisition Regulation* requirements as they pertain to paying employees proper rates, enrolling as a Federal contractor, ensuring employment eligibility, creating a code of business ethics and conduct, and ensuring affirmative action.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc. (SBBI), requires its subcontractors to submit Office of Management and Budget Standard Forms 1413, Statement and Acknowledgement, and requires SBBI to provide these forms to IBWC.

Recommendation 3. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc., obtains certifications from all subcontractors confirming that they or their principals are not debarred, suspended, or proposed for debarment.

Recommendation 4. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc., pays its subcontractors in accordance with the required timeframe or pay interest for each day payment is late.

Recommendation 5. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc., to establish procedures to ensure that materials purchased for American Recovery and Reinvestment Act construction projects are in compliance with the Buy American Act.

Recommendation 6. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc., to obtain documentation showing that the PVC pipe used in Contract No. IBM10C0003 was produced in the United States or was subject to an exception under *Federal Acquisition Regulation* and Buy American Act requirements.

Recommendation 7. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 require the contractor Sun Belt Builders, Inc. (SBBI), to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its Recovery and Reinvestment Act construction contracts and that SBBI prepares and submits required reports that are complete and accurate.

Scope and Methodology

The Department of State, Office of Inspector General, Office of Audits, engaged Cotton & Company, LLP (referred to as “we” in this appendix), to conduct performance audits of contractors that received American Recovery and Reinvestment Act (Recovery Act) funds from the International Boundary and Water Commission (IBWC). One of the contractors selected for review was Sun Belt Builders, Inc. (SBBI). The audit included a review of Recovery Act funds expended through June 30, 2010. Fieldwork was conducted in September 2010 at SBBI headquarters in Sonoita, Arizona.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objective.

To meet our audit objective, we used the following methodology:

- Reviewed documentation available on the Internet for SBBI and its subcontractors to evaluate their eligibility to perform on U.S. Government contracts and validate the organization’s entity status.
- Selected and tested a sample of Recovery Act reports on the Web site FederalReporting.gov to determine whether information reported was accurate and supported.
- Determined whether SBBI had established and functioning processes to ensure compliance with Buy American Act requirements.
- Selected and tested a sample of SBBI- and subcontractor-certified payrolls to verify compliance with Davis-Bacon Act¹ and Copeland Act² requirements and to verify that processes were in place to validate employment eligibility of those performing on the contract.
- Reviewed and evaluated subcontracts executed by SBBI to ensure inclusion of proper clauses, receipt of debarment certifications, notification made to IBWC of active subcontracts, and timely payments.

¹ The Davis-Bacon Act requires Federal contractors to pay prevailing wages, as defined by the Wage and Hour Division of the U.S. Department of Labor on Federally funded or assisted construction projects.

² The Copeland “Anti-Kickback” Act prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up compensation.

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- Evaluated whether SBBI and its subcontractors had proper programs in place to ensure compliance with code of business ethics, equal employment opportunity, and affirmative action requirements.

Review of Internal Controls

We reviewed the contractor SBBI's controls to ensure SBBI's own and subcontractor compliance with contractual and regulatory requirements and determined the following:

- SBBI did not have appropriate controls established to ensure compliance with contractual and regulatory requirements.
- SBBI did not have controls established to ensure that its subcontractors complied with *Federal Acquisition Regulation* requirements as they pertain to paying subcontractors in a timely manner, paying employees the appropriate rate, or ensuring employment eligibility.
- SBBI did not have a process to ensure that its subcontractors had corporate ethics programs or internal control systems.
- SBBI did not have controls established to ensure that subcontractors complied with affirmative action regulatory requirements.
- SBBI had not implemented controls to ensure that construction materials met Buy American Act requirements.
- SBBI did not have appropriate controls established to submit accurate Recovery Act reports.

Implementing recommendations contained in the report will improve controls over ensuring compliance with required laws and regulations and over accurately reporting Recovery Act spending to the public.

Use of Computer-Processed Data

We used payroll files, job cost data, and other financial reports from systems of the contractor SBBI to test the accuracy of SBBI's reporting of information on the Web site FederalReporting.gov. We also validated expenditures listed in IBWC's budgetary and billing systems to ensure accuracy of reporting on FederalReporting.gov. We found no unexplained discrepancies in the expenditure data reported, but we did find inaccuracies in the data reported on FederalReporting.gov. These errors occurred because SBBI personnel misunderstood the reporting requirements and were not caused by automated data system issues.

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Appendix B

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

August 4, 2011



United States Department of State and the Broadcasting Board of Governors
Office of Inspector General
Attn: Evelyn R. Klemstine, Assistant Inspector General for Audits
2201 C. Street, N.W.
Washington, D.C. 20520-0308

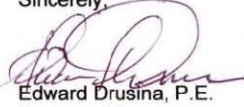
Subject: OIG Audit of International Boundary and Water Commission Construction
Contract with Sun Belt Builders, Inc.

Dear Ms. Klemstine:

We are pleased to provide you the attached responses to the findings and recommendations shown in the draft audit report entitled "Audit of International Boundary and Water Commission Construction Contract with, Sun Belt Builders, Inc using Funds provided by the American Recovery and Reinvestment Act Draft Report dated June 2011".

We note that improvements have already been made in the USIBWC Acquisition Division in response to the recommendations provided in the audit report, and specific responses to each finding and recommendation are provided.

Sincerely,



Edward Drusina, P.E.
Commissioner

Attachment
As Stated

cc: (b) (6)



The Commons, Building C, Suite 100 • 4171 N. Mesa Street • El Paso, Texas 79902-1441
(915) 832-4100 • Fax: (915) 832-4190 • <http://www.ibwc.gov>

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Thank you for the copy of your report dated June 2011, we greatly appreciate the opportunity to respond to the report.

The USIBWC generally agrees with all of the OIG recommendations, and each recommendation and suggestion that was noted in the report is addressed below:

OIG recommendations and USIBWC response:

1. Recommendation 1: We recommend that the USIBWC contracting officer for IBWC Contract no. IBM10C0003 and IBM10C0007 require that the contractor Sun Belt Builders, Inc. to implement procedures to ensure that it and its subcontractors comply with FAR requirements as they pertain to paying employees proper rates, enrolling as a Federal contractor, ensuring employment eligibility, creating a code of business ethics and conduct, and ensuring affirmative action.

Response: This office will request the contractor to certify implementation of such procedures on or before Aug 30, 2011.

2. Recommendation 2: We recommend that the USIBWC contracting officer for Contract IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc. require its subcontractors to submit OMB SF 1413s, Statement and Acknowledgement, and require SDBI to provide these forms to IBWC.

Response: This office will require the contractor to submit all OMB SF 1413s before end of Aug 30, 2011. This office has already implemented changes to the payment application process (cited in previous audit responses) to ensure that the on-site COR has confirmed receipt of SF1413s and all subcontractors have been accounted for.

3. Recommendation 3: We recommend that the USIBWC contracting officer for IBWC Contract Nos. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc. obtains certifications from all subcontractors confirming that they or their principals are not debarred, suspended or proposed for debarment.

Response: This office will require contractor to submit certification that all subcontractors are not debarred, suspended or proposed for debarment on or before Aug 30, 2011.

4. Recommendation 4: We recommend that the USIBWC contracting officer for IBWC Contract No. IBM10C0003 and IBM10C0007 ensure that the contractor Sun Belt Builders, Inc. pays its subcontractors in accordance with the required timeframe or pay interest for each day payment is late.

Response: This office will require contractor submit certification, on or before Aug 30, 2011, that it has implemented procedures to assure subcontractors are being paid on time or paying interest for each day payment is late.

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5. Recommendation 5: We recommend that the USIBWC contracting officer for IBM10C0003 and IBM10C0007 require that the prime contractor establish procedures to ensure that materials purchased for ARRA construction projects comply with the Buy American Act.

Response: The USIBWC has been requiring contractors to comply with the Buy American Act. A pre-requirement to receiving a Notice to Proceed is submission of a Quality Assurance Plan which identifies the contractor's Quality Control Program Manager. The QC Manager is responsible for implementation of the Buy American Act. That responsibility and ramifications for non-compliance is clearly addressed at each pre-construction conference. In turn, the contractor is made aware that any material that does not comply with the Buy-American Act will not be paid for and may need to be removed at contractor's expense. To further comply with the Act, the USIBWC Contracting Officer Representatives assigned to each project will assure that prior to acceptance of any payment application the acceptability of the material furnished by the prime and its subcontractors. Contracted support service providers will again be directed to be more vigilant of this requirement. Nonetheless, the contractor will be asked to certify that it has an established Buy American program in effect under these contracts.

6. Recommendation 6: We recommend that the USIBWC contracting officer for IBM10C0003 and IBM10C0007 require the prime contractor obtain documentation showing that the PVC pipe used in Contract IBM10C0003 was produced in the US or was subject to an exception under FAR and Buy American Act requirements.

Response: This office will require the prime contractor to obtain documentation of such to be submitted on or before Aug 30, 2011.

7. Recommendation 7: We recommend that the USIBWC contracting officer for contracts IBM10C0003 and IBM10C0007 require the prime contractor to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its Recovery and Reinvestment Act construction contracts and that SBBI prepares and submits required reports that are complete and accurate.

Response: The FederalReporting.gov website provides online training to contractors which we agree may be underutilized by the prime and subcontractors alike. This office will require ARRA recipients certify that their ARRA reporting specialists have taken the seven (7) webinars this training within 60 days of this response to audit.

Thank you again for the opportunity to respond to this draft report and please advise us of any follow-up questions, comments, or concerns about this response letter.

(b) (6)

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